



MIAMI BEACH

OFFICE OF THE CITY MANAGER

NO. LTC # **102-2012**

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CITY CLERK'S OFFICE
LETTER TO COMMISSION

TO: Mayor Matti Herrera Bower and Members of the City Commission

FROM: City Manager Jorge M. Gonzalez

DATE: April 16, 2012

SUBJECT: **Administrative Determination – 901, 909, & 919 Collins Ave. - Transfer of FAR**

As part of recent discussions by the Land Use and Development Committee, the Planning Department has implemented a formal policy regarding Administrative Determinations. Upon the issuance of a formal Administrative Determination, the Planning Department will notify the City Commission. This will permit an opportunity for the policy makers to review those areas where policy direction may be required, or where codification of such determinations would help clarify and improve the Land Development Regulations.

To that end, see the attached Administrative Determination regarding the proposed transfer of Floor Area Ratio (FAR) at 901, 909 & 919 Collins Avenue.

The Department will also post the Administrative Determination on the City's website. Should you have any questions or need additional information please feel free to contact me, or Richard Lorber, Acting Planning Director or Jorge Gomez, Assistant City Manager directly.

JMG/JGG/RGL

C: Jose Smith, City Attorney
Gary Held, First Assistant City Attorney
Jorge G. Gomez, Assistant City Manager
Richard G. Lorber, Acting Planning Director

F:\PLAN\ALL\CM_RESP\RL - LTC on Admin Determination re Sherbrooke TDR.docx



MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

PLANNING DEPARTMENT

Tel: (305) 673-7550, Fax: (305) 673-7559

April 10, 2012

Kent Harrison Robbins
Attorney at Law
1224 Washington Avenue
Miami Beach, FL 33139

Subject: Administrative Determination – 901, 909, & 919 Collins Ave. - Transfer of FAR

Dear Mr. Robbins:

This office is in receipt of your proposed Declaration of Restrictive Covenants in Lieu of Unity of Title, Easement and Operating Agreement and proposed site plan for the properties located at 901, 909, & 919 Collins Avenue (attached). You have supplied these documents as part of an application to the Historic Preservation Board, HPB File No. 7273, in which you propose to construct a rooftop addition to the Sherbrooke Apartments at 901 Collins Avenue. The Sherbrooke apartment building is a legal nonconforming structure with respect to maximum permitted Floor Area Ratio (FAR); the existing historic building consists of more floor area that is currently permitted by the MXE Mixed Use Entertainment zoning district in which it is located. In order to add additional floor area to the rooftop of this building, you propose to transfer unused floor area from the properties directly to the north of the building, located at 909 Collins Avenue and 919 Collins Avenue, and to this end you have submitted the above referenced documents.

Section 1.03(c) of the City of Miami Beach Charter prevents the floor area ratio of any property from being increased by zoning, transfer, or any other means from its current zoned floor area ratio as it exists currently, without being approved by a referendum. This principal is of key importance in the overall policymaking of the City, the protection of the historic character of the City's historic districts, and the careful planning regulation of growth and development.

The Charter provision above, however, does include an exception for the division of lots, or the aggregation of development rights on unified abutting parcels, as may be permitted by ordinance. The ordinance referred to is Section 118-5 of the Land Development Regulations of the City Code, which discusses covenants in lieu of unity of title, for multiple buildings proposed for a single lot or for single or multiple buildings proposed for a unified development site consisting of multiple lots. The focus of both the Charter provision and the LDR provision is on a *unified development site* (emphasis added).

I have reviewed your proposed Declaration of Restrictive Covenants in Lieu of Unity of Title, Easement and Operating Agreement and proposed site plan, and conclude that this is not a "unified development site" at all, but simply three separate properties, each containing existing historic buildings built at separate times, with no real relationship to one another. Rather, it appears clear that the proposed documents are styled simply to provide a vehicle to transfer Floor Area to an existing legal nonconforming building that would otherwise be precluded from adding additional new development by the important Charter provision noted above.


This conclusion is supported by the fact that the property owner of 901 Collins Avenue, Mitch Novick, had challenged one or more variances that the Board of Adjustment had previously approved for the two commercial properties at 909 and 919 Collins Avenue, which were granted to these properties as separate, single development sites. The parties now appear to have entered into some form of a settlement agreement in which the Sherbrooke agreed to dismiss the appeals against the variances granted the other two properties in return for the transfer of additional Floor Area Ratio from those properties to the Sherbrooke, which would allow the Sherbrooke to increase the Floor Area on its property despite the restriction of the Charter provision.

The purported unified site plan does not show any significant connection between the three buildings or their proposed uses. There is no proposal for any new construction that would require easements or rights of access. There is no significant common area proposed; the superficial improvements to the walkways and gates appear to be proposed simply to give an appearance that the properties are somehow unified, without being related to any design or operational requirements. In short, although you have attempted to provide the minimum required documentation to effectuate what is in reality a Transfer of Development Rights (TDR), I find that the proposed plan does not conform to the intention of the Charter or the requirements of the LDR provision to prevent inappropriate TDRs.

It is my Administrative Determination that the proposed unification of the three subject properties through the use of the proposed Covenant in Lieu of Unity of Title is not a true "unified development site" as required by Section 118-5, and the proposed construction of a rooftop addition on the Sherbrooke Apartments through the use of a transfer of development rights does not conform with the applicable Charter provision 1.03(c) or the Land Development Regulations.

If you are aggrieved by this decision, as per Section 118-136 of the Miami Beach City Code, you may appeal this decision to the Board of Adjustment. Please feel free to contact me directly if you have any further questions or wish to discuss the matter further.

Sincerely,



Digitally signed by Richard Lorber
DN: cn=Richard Lorber, o=City of Miami
Beach, ou=Planning Department,
email=richardlorber@miamibeachfl.gov,
c=US
Date: 2012.04.10 19:09:33 -04'00'

Richard G. Lorber, AICP, LEED AP
Acting Planning Director

C: Mitch Novick, Sherbrooke Apartments
Michael Larkin, Bercow & Radell
Mickey Marrero, Bercow & Radell
Jorge Gonzalez, City Manager
Jorge Gomez, Assistant City Manager
Jose Smith, City Attorney
Gary Held, First Assistant City Attorney

Attachments

Return to:
Kent Harrison Robbins
Attorney at Law
1224 Washington Avenue
Miami Beach, FL 33139

**DECLARATION OF RESTRICTIVE COVENANTS
IN LIEU OF UNITY OF TITLE**

KNOW ALL BY THESE PRESENTS that the Sherbrooke Apts., Inc. (hereinafter referred to as "Sherbrooke"), Roshtov 909, LLC (hereinafter referred to as "Roshtov") and S&S Properties (a Virginia partnership) (hereinafter referred to as "S&S") (hereinafter collectively referred to as "parties" or "Parties"), owners of properties located at 901 Collins Avenue, Miami Beach, Florida, 909 Collins Avenue, Miami Beach, Florida and 919 Collins Avenue, Miami Beach, Florida, respectively, collectively hereafter referred to as the "Owners, hereby make, declare and impose on the land herein described, the easement and covenants running with the title to the land, which shall be binding on the Owners, their heirs, successors and assigns, personal representatives, mortgagees, lessees, and against all persons claiming by, through or under them;

WHEREAS, Owners hold the fee simple title to the land in the City of Miami Beach, Florida, described as follows, and hereinafter called the "Property," for the project entitled "901, 909 and 919 Collins" located at 901 Collins Avenue, 909 Collins Avenue and 919 Collins Avenue, Miami Beach, Florida:

WHEREAS, the Owners intend to improve the Property for retail, commercial, residential and hotel use, as those respective uses apply; and

WHEREAS, the Owners may develop the buildings on the Property in a Florida Chapter 718 or Chapter 719 format of ownership and/or in three or more phases; and

WHEREAS, the Owners may develop the buildings on the Property for sale to multiple owners or in a condominium or cooperative format of ownership and/or in two or more phases;

WHEREAS, the Owner of 901 Collins is cooperative association and its shareholders each of have been granted a proprietary lease to their respective premises;

WHEREAS, the Owners may wish to convey portions of the Property from time to time, and may wish to offer units as condominiums or cooperatives, this instrument is executed in order to assure that the phased development, or development of the property with future multiple ownership, will not violate the Land Development Regulations of the City of Miami Beach;

Declaration of Restrictive Covenants

In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

WHEREAS, the Owners have agreed to entering into this Declaration of Restrictive Covenants in Lieu of Unity of Title;

NOW THEREFORE, in consideration of the premises, Owner hereby agrees as follows:

1. The subject site will be developed as a unified development site in substantial accordance with the approved site plan, after one has been submitted and approved under the City's land development regulations. No modification shall be effectuated in such site plan without the written consent of the then owner(s) of the portion of the property for which the modification is sought as well as all owners within the original unified development site, or their successors, whose consent shall not be unreasonably withheld, and the Director of the City's Planning Department; provided the Director finds that the modification is in compliance with the land development regulations. Should the Director withhold such approval, the then owner(s) of the phase or portion of the property for which modification is sought shall be permitted to seek such modification by application to modify the plan at public hearing before the appropriate City board or the City Commission of Miami Beach, Florida, (whichever by law has jurisdiction over such matters). Such application shall be in addition to all other required approvals necessary for the modification sought. Where required by applicable provision of the Miami Beach Code, proposed modifications to the property's use, operation, physical condition or site plan shall also be required to return to the appropriate development review board or boards for consideration of the effect on prior approvals and the affirmation, modification or release of previously issued approvals or imposed conditions.

2. If the subject property will be developed in phases, each phase will be developed in substantial accordance with the approved site plan. Construction plans shall be submitted to the City for each of site no later than 365 days of the effective date of the Covenant or in compliance with the underlying development orders whichever applies first. No particular order of constructing the phases is required by this Covenant.

3. In the event of multiple ownerships subsequent to site plan approval, each of the subsequent owners shall be bound by the terms, provisions and conditions of the declaration of restrictive covenants. Owners further agree that they will not convey portions of the subject property to such other parties unless and until the Owners and such other party or parties shall have executed and mutually delivered, in recordable form, an instrument to be known as an easement and operating agreement which shall contain, among other things:

- (i) Easements in the common area of each parcel for ingress to and egress from the other parcels for the limited purpose of maintenance and repairs;
- (ii) There shall be no easements in the common area of each parcel for the passage and parking of vehicles

Declaration of Restrictive Covenants.

In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

- (iii) Easements in the common sideyard area of each parcel for the passage and accommodation of pedestrians shall be limited to the owners, employees of the owners, and their tenants;
- (iv) There shall be no easements for access roads across the common area of each parcel to public and private roadways;
- (v) Easements for the installation, use, operation, maintenance, repair, replacement, relocation and removal of utility facilities;
- (vi) Easements on each such parcel for construction of gates, fences, ramps, walkways and railings (and their respective footing and foundations) in favor of each such other parcel as shown in the unified site plan
- (vii) There shall be no easements upon each such parcel in favor of each adjoining parcel for footings, supports and foundations;
- (viii) There will be no easements on each parcel for attachment of buildings;
- (ix) There will be no easements on the set backs of each parcel for building projections encroaching upon such parcel from the adjoining parcels except for canopies, lights, lighting devices, awnings, balconies, gates, and stairs not exceeding 5 risers, and handicap ramps; any such encroachments must be in substantial compliance with the site plans referenced in paragraph
- (x) Appropriate reservation of rights to grant easements to utility companies;
- (xi) Appropriate reservation of rights to road right-of-ways and curb cuts;
- (xii) There will be no easements in favor of each such parcel for pedestrian and vehicular traffic over dedicated private ring roads and access roads as there are no access or private roads; and
- (xiii) Appropriate agreements between the owners of the several parcels as to the obligation to maintain and repair common side yard landscaping, both hard and soft.

The easement provisions or portions thereof may be waived by the Director if they are not applicable to the subject property. These provisions of the easement and operating agreement shall not be amended without prior written approval of the City Attorney. In addition, such easement and operating agreement shall contain such other provisions with respect to the operation, maintenance and development of the property as to which the parties thereto may agree, or the Director may require, all to the end that although the property may have several owners, it will be constructed, conveyed, maintained and operated in accordance with the approved site plan. The City's Planning Department shall treat the unified site plan under these land development regulations, regardless of separate ownerships.

4. Legal Description of Properties of Respective Parties. Attached hereto are the legal descriptions of the properties owned by the respective parties. Sherbrooke owns 901

Declaration of Restrictive Covenants

In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

Collins Avenue (Exhibit A); Rostov owns 909 Collins Avenue (Exhibit B) and S&S owns 919 Collins Avenue (Exhibit C).

5. Site Plans. The site plans for each of the above described properties are as reflected in the approved HPB Orders for File Nos. 7256 (909 Collins Avenue) and 7237 (919 Collins Avenue) and in the proposed site plan in the pending application HPB File No. 7273 (901 Collins Avenue), but are subject to further modification to meet the requirements of the unified site plan.

6. Site Plan Subject to Declaration of Restricted Covenants. The parties agree to develop the improvements referenced in the unified site plan (Composite Exhibit D) or in substantial compliance with that plan subject to City approval of the Declaration of Restricted Covenants pursuant to Miami Beach Code Section 118-5(2). Each party will be responsible for all costs for development of the parcel that the respective party owns, except as follows:

a. At the expense of Roshtov, the wall between 901 and 909 Collins will be removed, fire suppression lines will be buried, and a protective barrier will be constructed around the indentation at the steps of the north side of 901 Collins Avenue. Notwithstanding the foregoing, if the cost of moving the fire suppression line exceeds \$10,000.00, then the cost in excess of \$10,000.00 shall be paid by Sherbrooke. Moreover, if the City of Miami Beach does not permit the burial of this fire suppression line, then the obligation to bury the fire suppression line is extinguished. Sherbrooke will secure contractors and manage the burial of the fire suppression line at the expense of Roshtov, subject to the cost limitations aforementioned.

b. Roshtov and Sherbrooke will share the expense of shrubbery and sod for the area between the two properties and Roshtov will maintain said shrubbery and grass.

c. Roshtov and Sherbrooke will share the expense equally of installing a gate on the west and east sides of the mutual yard which will be accessible as an easement for the management of Roshtov and Sherbrooke.

d. Sherbrooke has provided a common landscaping plan that will be maintained by the respective owners, except as otherwise stated herein.

e. Sherbrooke has prepared, at its expense, the unified site plan, which unified site plan has been completed by Sherbrooke's architect, a copy of which is attached hereto; the hardscape and softscape of the ground level of the site plan had been further revised to meet the comments of staff and to further unify the project, as per Exhibit E.

Declaration of Restrictive Covenants

In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

f. Sherbrooke will pay for the initial installation of additional hardscape, shrubbery, tables, benches and gates between 909 Collins Avenue and 919 Collins Avenue, and north of 919 Collins Avenue required to meet the particularities of the unified site plan for those expenses in excess of the cost of what had been previously approved by the applicable land use boards;

g. Grading of each of the proposed sites will be at the expense of the respective owners.

h. Maintenance of the hardscape and softscape shall be the responsibility of the owners of the respective properties and replacement costs will be shared by the respective property owners on which the particular hardscape and softscape will be located.

i. Owners and their staff, employees, and tenants shall have limited access to the gated areas of the unified site, as specified in Exhibit E; between 10:00 AM and 6:00 PM for the purpose of activating that space and using the common space for meals and breaks and during emergencies. No smoking or drinking of alcohol beverages will be permitted and no littering will be permitted by the respective owner through the establishment of rules to be imposed on their respective staff, employees, and tenants.

j. During civil emergencies, during emergency curfews, hurricanes and civil unrest, the Sherbrooke will provide access on its rooftop and lobby for the limited purpose of staging security for the unified site.

k. Sherbrooke will allow the each owner of each respective parcel to place two elevated security cameras on the North wall of the Sherbrooke exterior premises in order for the owners of the respective parcels to monitor the public streets, sidewalks and alleyways adjacent to their respective parcels

7. Reallocation of FAR. Roshtov shall be a donor of up to the amount of 3,000 square feet of FAR to recipient Sherbrooke, the exact amount of square footage to be determined by Sherbrooke, and S&S shall be a donor of up to the amount of 5,000 square feet of FAR to recipient Sherbrooke, the exact amount of square footage to be determined by Sherbrooke. The reallocation shall be permanent and irrevocable and will permanently diminish the square footage allocable to FAR that may be used at the respective donor sites. Not in excess of 8,000 square feet may be transferred to the Sherbrooke site and only for the purpose of bringing the existing building into compliance with current FAR regulations as well as to add a rooftop addition to be connected to an existing unit of Sherbrooke on the third floor, to add an elevator stop, an elevator vestibule, a storage room, a restroom to serve the public solarium, and to provide for a covered walkway to the rooftop addition in substantial compliance with the unified

Declaration of Restrictive Covenants

In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

site plan and the plans submitted for in the pending application HPB File No. 7273 (901 Collins Avenue). FAR, Floor Area Ratio, square footage is defined in accordance with its current definition in Section 114 of the Miami Beach Code; any amendment to the definition which increases the allowable square footage on a particular parcel of property will be applied in the future. In no way shall any limitation of FAR violate any federal regulation that facilitates the civil right to public access.

8. Conditions. The following conditions shall also apply with respect to unified site:

a. No loudspeakers will be affixed to or located on the exterior of the premises, except as required for Building and Fire Code purposes.

b. No outdoor live music will be allowed at any time, except as may be permitted by a valid Special Event Permit issued by the City, with prior notice to the adjoining properties, upon application for such a permit and prior to its issuance. No such permit will include the use of percussion instruments, unless it is explicitly approved by the Special Event Permit. Any such Special Event Permit will be for a private noncommercial party or charitable event and will be limited to no more than one day in any given month and during national holidays.

c. Outdoor and Open Air Entertainment Establishments and Neighborhood Impact Establishments are prohibited.

d. Any rooftop use will be only for the respective owners, their lessees, guests and hotel guests.

e. In addition to the limitations specified herein, to the extent permitted by the law, the respective owners will prohibit on the premises noise that is prohibited under the City of Miami Beach noise ordinance, Chapter 46, Article IV, as it may be amended from time to time.

9. Period of Effectiveness. The provisions of this instrument shall become effective upon their recordation in the public records of Miami-Dade County, Florida, and shall continue in effect for a period of thirty (30) years after the date of such recordation, after which time they shall be extended automatically for successive periods of ten (10) years each, unless released in writing by the then owners of the Property and the Director of the Department of Planning, acting for and on behalf of the City of Miami Beach, Florida upon the demonstration and affirmative finding that the same is no longer necessary to preserve and protect the Property for the purposes herein intended.

Declaration of Restrictive Covenants

In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

10. Amendments Upon Completion of Construction. Upon completion of the construction pursuant to the site plans approved by the applicable board, the provisions of this instrument may be amended or modified by a written instrument executed by all of the Owners of the Property, with joinders by all mortgagees, if any. Should this Declaration of Restrictive Covenants be so modified or amended, and the Director of the Department of Planning, or his successor, approves, then such Director or successor shall forthwith execute a written instrument effectuating and acknowledging such amendment, modification or release. No modification or amendment shall be effective without the Director's, or his successor's, approval. No joinder of owner is required for construction on the particular parcel consistent with this Declaration and the Easement and Operating Agreement.

11. Enforcement. Enforcement shall be by action against any parties or persons violating or attempting to violate any covenants. The prevailing party to any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements, allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

12. Severability. Except for the provisions in the paragraph titled "Reallocation of FAR," invalidation of any of these covenants by judgment of Court shall not affect any of the other provisions, which shall remain in full force and effect.

13. Recording of Declaration. This Declaration shall be recorded in the public records of Miami-Dade County at the Owners' expense.

14. Cumulative Rights, Remedies and Privileges. All rights, remedies and privileges granted herein shall be deemed to be cumulative and the exercise of any one or more shall neither be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other additional rights, remedies or privileges.

15. Remedies. In the event of a violation of this Declaration, in addition to any other remedies available, the City of Miami Beach is hereby authorized to withhold any future permits, and refuse to make any inspections or grant any approval, until such time as this Declaration is complied with.

Signed, witnessed by two signatures, executed and acknowledged on this _____ day of _____, 2012.

Declaration of Restrictive Covenants

In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

IN WITNESS WHEREOF, the Owners have caused these presents to be signed in their name by their proper officials.

Witnesses:

Signature

Printed Name

Signature

Printed Name

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

Sherbrooke Apts., Inc.

Address:
901 Collins Avenue
Miami Beach, Florida 33139

By: _____
Mitch Novick
Title: President

The foregoing instrument was acknowledged before me by Mitch Novick, the President of Sherbrooke Apts., Inc., on behalf of the corporation. He or she is personally known to me or has produced _____, as identification.

Witness my signature and official seal this _____ day of _____, 2012, in the County and State aforesaid.

Notary Public-State of Florida

Printed Name

My Commission Expires:

Declaration of Restrictive Covenants

In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

Witnesses:

Signature

Printed Name

Signature

Printed Name

Roshtov 909, LLC

Address:

By: _____

Isaac Urztein

Title: Manager

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me by Issaac Urztein, the Manager of Roshtov 909, LLC, on behalf of the Limited Liability Company. He or she is personally known to me or has produced _____, as identification.

Witness my signature and official seal this _____ day of _____, 2012, in the County and State aforesaid.

Notary Public, State of _____

Printed Name

My Commission Expires:

Declaration of Restrictive Covenants

In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

Witnesses:

Signature

Printed Name

Signature

Printed Name

S&S Properties, A Virginia Partnership

Address: _____

By: _____

Avraham Sibony

Title: Managing Partner

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me by Avraham Sibony, the Managing Partner on behalf of S&S Properties, A Virginia Partnership. He or she is personally known to me or has produced _____, as identification.

Witness my signature and official seal this _____ day of _____, 2012, in the County and State aforesaid.

Notary Public, State of _____

Printed Name

My Commission Expires:

Declaration of Restrictive Covenants
In Lieu of Unity of Title: 901,909, and 919 Collins Avenue, Miami Beach, Florida

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

City Planning Director

Date

EASEMENT AND OPERATING AGREEMENT

THIS EASEMENT AND OPERATING AGREEMENT ("Agreement") is made as of the ____ day of _____, ____ by and between Sherbrooke Apts., Inc. (hereinafter referred to as "Sherbrooke"), Roshtov 909, LLC (hereinafter referred to as "Roshtov") and S&S Properties (a Virginia partnership) (hereinafter referred to as "S&S") (hereinafter collectively referred to as "parties" or "Parties"), owners of properties located at 901 Collins Avenue, Miami Beach, Florida, 909 Collins Avenue, Miami Beach, Florida and 919 Collins Avenue, Miami Beach, Florida, respectively, collectively hereafter referred to as the "Owners

RECITALS:

A. Sherbrooke Apts., Inc. is the owner of that certain improved real property located at 901 Collins Avenue, Miami Beach, Miami-Dade County, Florida, described on **Exhibit "A"** attached hereto and by this reference made a part hereof ("**Sherbrooke Property**").

B. Roshtov 909, LLC is the owner of that certain real property located at 909 Collins Avenue, Miami Beach, Miami-Dade County, Florida and legally described on **Exhibit "B"** attached hereto and by this reference made a part hereof ("**Roshtov Property**").

C. S&S Properties is the owner of that certain real property located at 909 Collins Avenue, Miami Beach, Miami-Dade County, Florida and legally described on Exhibit "C" attached hereto and by this reference made a part hereof ("S&S Property").

D. The Sherbrooke Property, the Roshtov Property and the S&S Property shall hereinafter be collectively referred to as the "**Property**".

E. The Property is encumbered by that certain Declaration of Restrictive Covenants In Lieu Of Unity of Title ("**Declaration**") recorded _____ in Official Records Book _____, Page _____ of the Public Records of Dade County, Florida. Paragraph number 3 of the Declaration requires the creation and establishment of an Easement and Operating Agreement as a condition precedent to development of the respective parcels, and Sherbrooke, Roshtov, and S&S desire to enter into this Agreement in furtherance thereof and to implement the unified site plan.

F. The Parties have entered into a Settlement Agreement on October 21, 2011 which resulted in the Sherbrooke dismissing appeal or waving the right to appeal development orders benefiting the Roshtov Property and S&S Property and Sherbrooke has agreed not to challenge any building permit implementing said development orders.

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Sherbrooke, Roshtov, and S&S hereby grant, reserve, declare and create the easements set forth below, each of which shall be deemed easements running with and benefitting the portions of the Property described below and burdening the portions of the Property described below. The Property shall be held, sold and conveyed subject to the

following restrictions, covenants and conditions, which shall run with the Property and be binding on all parties having any right, title or interest in or to the Property or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of, and be binding upon, each owner of all or an portion thereof and their heirs, personal representatives, successors and assigns.

1. **RECITALS; DEFINED TERMS.** The Parties acknowledge and agree that the foregoing recitals to this Agreement and the exhibits referred to in this Agreement are true and correct and are hereby incorporated into and made part of this Agreement.

2. **REALLOCATING FAR.** Roshtov shall be a donor of up to the amount of 3,000 square feet of FAR to recipient Sherbrooke, the exact amount of square footage to be determined by Sherbrooke, and S&S shall be a donor of up to the amount of 5,000 square feet of FAR to recipient Sherbrooke, the exact amount of square footage to be determined by Sherbrooke. The reallocation shall be permanent and irrevocable and will permanently diminish the square footage allocable to FAR that may be used at the respective donor sites. Not in excess of 8,000 square feet may be transferred to the Sherbrooke site and only for the purpose of bringing the existing building into compliance with current FAR regulations as well as to add a rooftop addition to be connected to an existing unit of Sherbrooke on the third floor, to add an elevator stop, elevator vestibule, a storage room, rest room to serve the public solarium, and to provide for a covered walkway to the rooftop addition in substantial compliance with the unified site plan and the plans submitted for in the pending application HPB File No. 7273 (901 Collins Avenue). FAR, Floor Area Ratio, square footage is defined in accordance with its current definition in Section 114 of the Miami Beach Code; any amendment to the definition which increases the allowable square footage on a particular parcel of property will be applied in the future. In no way shall any limitation of FAR violate any federal regulation that facilitates the civil right to public access.

3. **EASEMENTS FOR SECURITY STAGING AND CAMERAS.** In order to provide emergency security staging facilities for Roshtov Property and S&S Property, Sherbrooke hereby grants to Roshtov Property and S&S Property a non-exclusive easement during emergency curfews, hurricanes and civil unrest, to place security personnel in its lobby and rooftop for the limited purpose of staging security for the unified site. The President of the Sherbrooke or his designate will have authority to designate the specific portions of the lobby and rooftop to accommodate these security needs. This Security Access Easement shall be for the benefit of the owners and their respective tenants. In addition, Sherbrooke hereby grants to Roshtov Property and S&S Property a non-exclusive easement on the northern wall of the Sherbrooke Property for the placement of up to two security cameras to each parcel owner to monitor the public streets, sidewalks and alleyways adjacent to their respective parcels.

4. **SIDE YARD ACTIVATION EASEMENTS; MAINTENANCE AND REPAIR EASEMENTS.** In order to activate the side yards between the abutting the property, each abutting owner grants to the other abutting owner a non-exclusive easement for access which will be referenced as limited access gated side yards. Owners and their employees and tenants shall have limited access to the gated areas of the unified site, as specified in Exhibit E of the Declaration, between 10:00 AM and 6:00 PM for the purpose of activating that space and using the common space for meals and breaks and during emergencies. For the purposes of this activation, access to those side yards by the employees and tenants will be limited through access

from the adjoining building but not through the gates. No smoking, drinking of alcohol beverages, or littering will be permitted by the respective owner through the establishment of rules to be imposed on their respective employees and tenants.

At all times, each owner will have ingress and egress over and across that portion of the abutting side yards and through the gates defining those side yards; access through the gates is limited to owners' staff and owners' contractors for the limited purpose of providing maintenance and repairs in those side yards and necessary maintenance and repairs for the respective abutting properties. Those gates shall remain locked at all times. If necessary, trash and garbage removal contractors will also be provided a limited right to access the respective side yards for trash and garbage removal.

Each of the owners of side yards shall have the obligation to maintain, repair and replace, at such owners' cost, all portions of the hardscape and softscape that are located on or within the portions of the aforementioned easement areas so that all of same are at all times in good working order, condition and repair.

At its own expense, the Sherbrooke will maintain the gates for the side yards but should they require replacement or substantial repair, the abutting side yard owners on which the gates are placed are responsible for all related expense to be allocated equally between the owners of the abutting properties. The Sherbrooke's obligation to maintain the side yard gates does not create any other obligation upon the Sherbrooke related to securing the side yards which security is the responsibility of the respective property owners. Each owner is responsible for the action of its respective employees and tenants. Sherbrooke will provide an initial key for the gates to each of the property owners.

5. COMPLIANCE WITH SITE PLAN. All improvements to the Property shall be substantially in accordance with the unified site plan, or in accordance with any approved amendment thereof. No development changes or improvements shall be made or constructed on the Property if the same may cause the improvements on any of the parcels of the Property not to be in compliance with the Declaration or the Site Plan as amended or any laws, rules, ordinances, restrictive covenants, or regulations affecting any of the Properties.

6. EASEMENTS FOR UTILITY AND DRAINAGE PURPOSES; EASEMENTS FOR CONSTRUCTION RELATED TO IMPROVEMENTS REQUIRED BY SITE PLAN.

(a) Each abutting property owner grants the other abutting owner a non-exclusive easement, under and through all portions of abutting owner's property side yards a non-exclusive easement, in the abutting side yards, for the purposes of the installation, maintenance, removal and replacement of all necessary or desirable water pipes and systems, telephone lines, gas lines, sewage disposal pipes and systems, electricity lines, drainage lines and systems, and other utilities lines, systems and facilities to service the respective owners properties. However, at no time shall the location of such water pipes and systems, telephone lines, gas lines, sewage disposal pipes and systems, electricity lines, drainage lines and systems, and other utilities lines, systems and facilities to service the respective owner's property permanently encroach the sideyard of the abutting owner's property. This provision does not prohibit abutting sideyard owners from entering agreements permitting encroachments.

(b) Each abutting property may, at its cost and upon reasonable notice to the owners of the abutting property, reconstruct and relocate any of the foregoing that are from time to time located on the portions side yard property provided the relocation or reconstruction is performed in a manner that does not reduce the usefulness or function of the lines, systems or facilities as they existed prior to the reconstruction or relocation, is done in such a manner so as to minimize a reduction in or interruption of service, and is done in such a manner so as to minimize inconvenience to the owners and tenants of the abutting property owners. All lines, systems and facilities serving any portion shall be located underground in their respective side yards.

(c) During the course of construction, each property owner grants the abutting property owner a limited easement for access to the common sideyards to construct those improvements consistent with unified site plan.

(d) Roshtov grants the Sherbrooke an easement to encroach upon its sideyard to enable the Sherbrooke to bury its fire suppression lines in the side yard between the Sherbrooke Property and Roshtov Property.

(e) Each abutting property owner grants to the other abutting property owner those easements necessary for the placement of French drains and other systems for surface drainage of the abutting properties and will allow said drainage systems to encroach on the abutting properties in a manner that will be approved by the civil engineers of the adjoining property owners.

(f) Prior to the use of the utility and construction easements, the abutting owners shall have the right to require bonds, liens, waivers, and/or insurance to assure that no lien for labor, services or materials in connection with the use of the utility and to insure the owners against liability arising from the use of the utility easements during utility construction.

7. **DEFAULT; ENFORCEMENT.** Failure of the owner of any portion of the Property to comply with the provisions hereof after receiving written notice delivered to the address for such owner shall constitute a default. Enforcement shall be by action against any parties or persons violating or attempting to violate any covenants. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to an award of court costs and reasonable attorneys' fees at all tribunal levels and in connection with all proceedings. Notwithstanding any other provision of this Agreement, in connection with the recovery of a money judgment hereunder, the prevailing party shall look solely to that portion of the Property that is or was owned by the non-prevailing party for the satisfaction of such money judgment; provided, however, that the foregoing shall in no way limit, impair or otherwise affect the right of any owner to seek and obtain equitable relief (by specific performance, injunction or otherwise) without requirement of bond to compel compliance with the provisions of this Agreement, and provided, however, such prevailing party shall have the right to satisfy any money judgment from the portion of the Property that is or was owned by the non-prevailing party. The prevailing party to any action or suit pertaining to or arising out of this Declaration shall be entitled to recover, in addition to costs and disbursements, allowed by law, such sum as the Court may adjudge to be reasonable for the services of his attorney. This enforcement provision shall be in addition to any other remedies available at law, in equity or both.

8. **NOTICES.** All notices, demands, consents, offers and other communication required or permitted to be given pursuant to this Agreement shall be in writing and shall be considered as properly given if mailed from within the United States, by certified mail, return receipt requested, or if made by facsimile with electronic confirmation or if sent by commercial courier, such as Federal Express, or by local courier, addressed to the respective address of such parties set forth below.

As to Sherbrooke:

Kent Harrison Robbins
1224 Washington Avenue
Miami Beach, Florida 33139
Email: khr@khrlawoffices.com

As to Roshtov:

Michael W. Larkin, Esq.
Bercow Radell & Fernandez
Southeast Financial Center
200 South Biscayne Boulevard, Suite 850
Miami, Florida 33131
Email: MLarkin@brzoninglaw.com

As to S&S:

Michael W. Larkin, Esq.
Bercow Radell & Fernandez
Southeast Financial Center
200 South Biscayne Boulevard, Suite 850
Miami, Florida 33131
Email: MLarkin@brzoninglaw.com

Notices delivered by a nationally recognized overnight courier service such as Federal Express shall be effective on the date received. Notices sent by facsimile shall be effective on the date transmitted and received, provided that receipt occurs before 5:00 p.m. Eastern Standard Time on a business day. If facsimile transmissions are received after that time, the notices shall be effective on the following business day. If the day for giving any notice or performing any act under this Agreement falls on a Saturday, Sunday, or on a day which the United States Post Office is not open, the time shall be extended to the next day that is not a Saturday, Sunday, or Post Office holiday. Any party wishing to change the person designated to receive notices may do so by complying with the provisions of this paragraph.

9. **ESTOPPEL CERTIFICATES.** The owners from time to time of each portion of the Property agree, upon ten (10) days written request, to furnish to any other owner of any portion of the Property a written certificate containing such truthful information as may reasonably be

requested regarding compliance with the terms and conditions of this Agreement or any sums due hereunder.

10. **NO DEDICATION**. Nothing contained herein shall be construed as a dedication of the easements granted herein to the general public.

11. **COVENANT RUNNING WITH THE LAND**. This Agreement shall be a covenant running with the land and shall be binding upon and inure to the benefit of, as appropriate, the owners from time to time of every portion of the Property, their heirs, legal representatives, successors, assigns, tenants, guests, licensees, invitees and mortgagees; and the joinder of any tenants, guests, licensees or invitees of any such owner (or anyone else) shall specifically not be required in connection with any of the foregoing; provided, however, that any such abrogation, modification, termination, rescission or amendment may require prior written approval and consent of the Miami Beach Planning Director and City Attorney.

12. **RESERVATION OF RIGHTS**. The execution and delivery of this Agreement does not terminate any public utility easements on the property; parties will cooperate to move those easements to areas that will minimize the impact on the unified site plan. Each owner reserves its respective right to add right-of-ways and curb cuts with respect to Collins Court, as may be permitted by jurisdictions having authority.

13. **MISCELLANEOUS**. Waiver of any one of the covenants, conditions or agreements contained herein by any person or entity having a right to enforce the same shall not be deemed to be a waiver of any of the other covenants or agreements contained herein. However, the denial of the reallocation of FAR to the benefit of Sherbrooke as contemplated herein after exhausting all administrative, legal, and appellate remedies will vitiate this agreement and any obligations the Sherbrooke may have. Each property owner will disclose this Agreement to their respective insurers and will maintain liability insurance in an amount of not less than \$1,000,000 to insure for any personal injury related to the use of the side yards. Further, the failure of any party having the right to enforce this Agreement to enforce the same in any instance shall not be deemed a future waiver of such rights. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the State of Florida. The invalidity of any part of this Agreement shall not impair or affect in any manner the validity or enforceability of the remaining provisions of this Agreement, which shall remain in full force and effect and shall be given their nearest enforceable meanings.

14. **NO MERGER OF SETTLEMENT AGREEMENT**. The execution of this Agreement and the related Declaration shall not in any way merge with the October 21, 2012 Settlement Agreement between the parties which Settlement Agreement remains in full force and effect without limitation. Execution of this Agreement affirms and ratifies said Settlement Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be made and executed as of the day and year first above written.

Witnesses:

Signature

Printed Name

Signature

Printed Name

STATE OF FLORIDA)
)
COUNTY OF MIAMI-DADE)

Sherbrooke Apts., Inc.

Address:

901 Collins Avenue

Miami Beach, Florida 33139

By: _____

Mitch Novick

Title: President

The foregoing instrument was acknowledged before me by Mitch Novick, the President of Sherbrooke Apts., Inc., on behalf of the corporation. He or she is personally known to me or has produced _____, as identification.

Witness my signature and official seal this _____ day of _____, 2012, in the County and State aforesaid.

Notary Public-State of Florida

Printed Name

My Commission Expires:

Witnesses:

Signature

Printed Name

Signature

Printed Name

STATE OF _____)

COUNTY OF _____)

The foregoing instrument was acknowledged before me by Isaac Urztein, the Manager of Roshtov 909, LLC, on behalf of the Limited Liability Company. He or she is personally known to me or has produced _____, as identification.

Witness my signature and official seal this _____ day of _____, 2012, in the County and State aforesaid.

Roshtov 909, LLC

Address: _____

By: _____

Isaac Urztein

Title: Manager

Notary Public, State of _____

Printed Name

My Commission Expires: _____

Witnesses:

Signature

Printed Name

Signature

Printed Name

STATE OF _____)

COUNTY OF _____)

S&S Properties, A Virginia Partnership

Address: _____

By: _____

Avraham Sibony

Title: Managing Partner

The foregoing instrument was acknowledged before me by Avraham Sibony, the Managing Partner on behalf of S&S Properties, A Virginia Partnership. He or she is personally known to me or has produced _____, as identification.

Witness my signature and official seal this _____ day of _____, 2012, in the County and State aforesaid.

Notary Public, State of _____

Printed Name

My Commission Expires: _____

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION

City Attorney

Date

City Planning Director

Date

901, 909 & 919 COLLINS AVENUE PROJECT ZONING DATA

GENERAL	
ZONING DISTRICT	MXE-MIXED USE ENTERTAINMENT / ARCHITECTURAL DISTRICT
LOT AREA COMBINED	7,000 x 3 = 21,000 SQUARE FEET
FLOOR AREA RATIO	2.0
MAX FLOOR AREA RATIO	2.0 X 21,000 SF = 42,000 SF

EXISTING FLOOR AREA		CONTRIBUTING FAR	NON-CONTRIBUTING FAR
901 COLLINS AVE	17,666 SF	1,128 SF	-
909 COLLINS AVE	3,468 SF	-	-
919 COLLINS AVE	6,661 SF	-	-
TOTAL	27,795 SF	1,128 SF	-

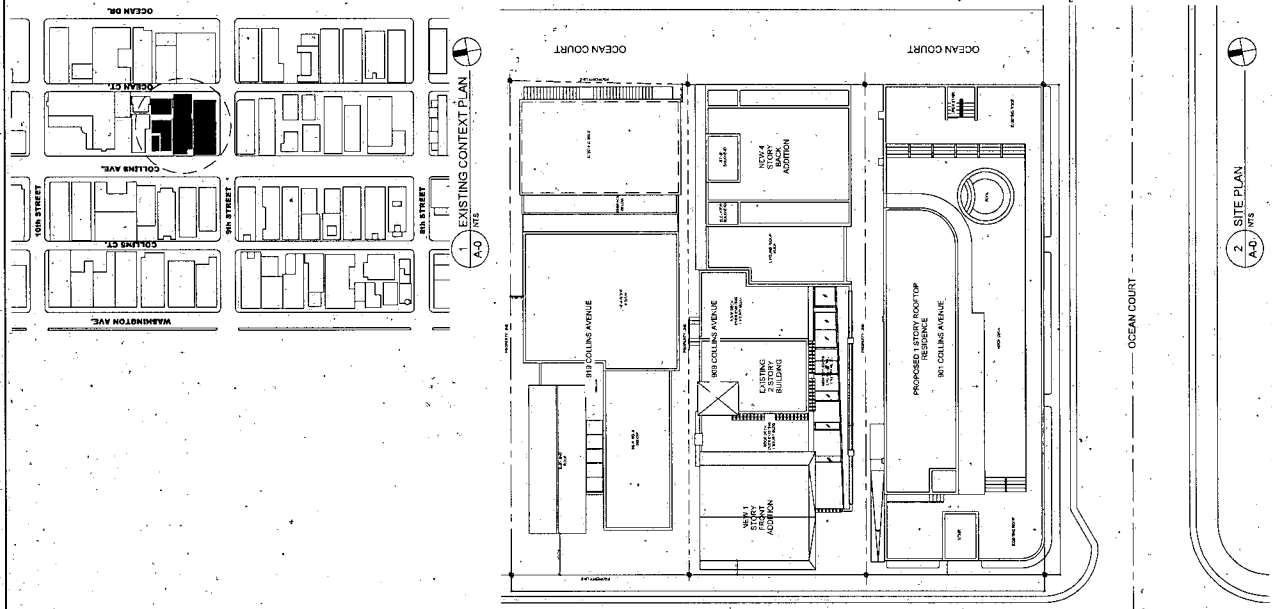
PROPOSED FLOOR AREA		CONTRIBUTING FAR	NON-CONTRIBUTING FAR
901 COLLINS AVE	19,236 SF	1,438 SF	-
909 COLLINS AVE	10,456 SF	-	-
919 COLLINS AVE	6,749 SF	1,417 SF	-
TOTAL	36,444 SF	2,855 SF	-

OPEN SPACE RATIO		REQUIRED	PROVIDED
901, 909, 919 COLLINS AVE	NA	NA	NA

BUILDING HEIGHT		REQUIRED	PROVIDED
MAX. BUILDING HEIGHT (901)	50'	50'	50'
MAX. BUILDING HEIGHT (909)	50'	50'	50'
MAX. BUILDING HEIGHT (919)	50'	50'	36'-3" (EXISTING), 26'-8" (NEW BLDG.)
MAX. # OF STORIES (901)	5	5	4
MAX. # OF STORIES (909)	5	5	4
MAX. # OF STORIES (919)	5	5	3

MINIMUM PARKING		REQUIRED	EXISTING
RESIDENTIAL (901)	0	0	2 SPACES
NEW RETAIL (909)	25	25	0 SPACES
NEW RETAIL (919)	4	4	2 SPACES

SETBACK REQUIREMENTS		REQUIRED	EXISTING/PROPOSED
FRONT (COLLINS AVE.)	20'	20'	5.21'
FRONT SIDE (8TH ST.)	19'	19'	0'
REAR (ALLEY)	0'	0'	0'
FRONT (COLLINS AVE.)	20'	20'	18'-11" (NEW 5'-0")
REAR (ALLEY)	0'	0'	0'
FRONT (COLLINS AVE.)	20'	20'	11'-6" (NEW 12'-0")
FRONT SIDE NORTH (INTR.)	5'	5'	3'-4" (NEW 3'-6")
REAR EAST (ALLEY)	0'	0'	5'



DATE: SEPTEMBER 30, 2011

PHASE: PH2

SHEET DESCRIPTION: PROPERTY UNIFICATION

SCALE: 1/8" = 1'-0"

DRAWN BY: JH

SHEET NUMBER: A-0

OWNER: [Redacted]

DESIGNER: [Redacted]

PROJECT: 901, 909 & 919 COLLINS AVENUE

LOCATION: MIAMI BEACH, FL 33139

ARCHITECT: WILLIAM LANE ARCHITECT, INC.

ADDRESS: 350 LINCOLN ROAD, SUITE 501

PHONE: 305.531.5292

FAX: 305.531.5494

NOT FOR CONSTRUCTION

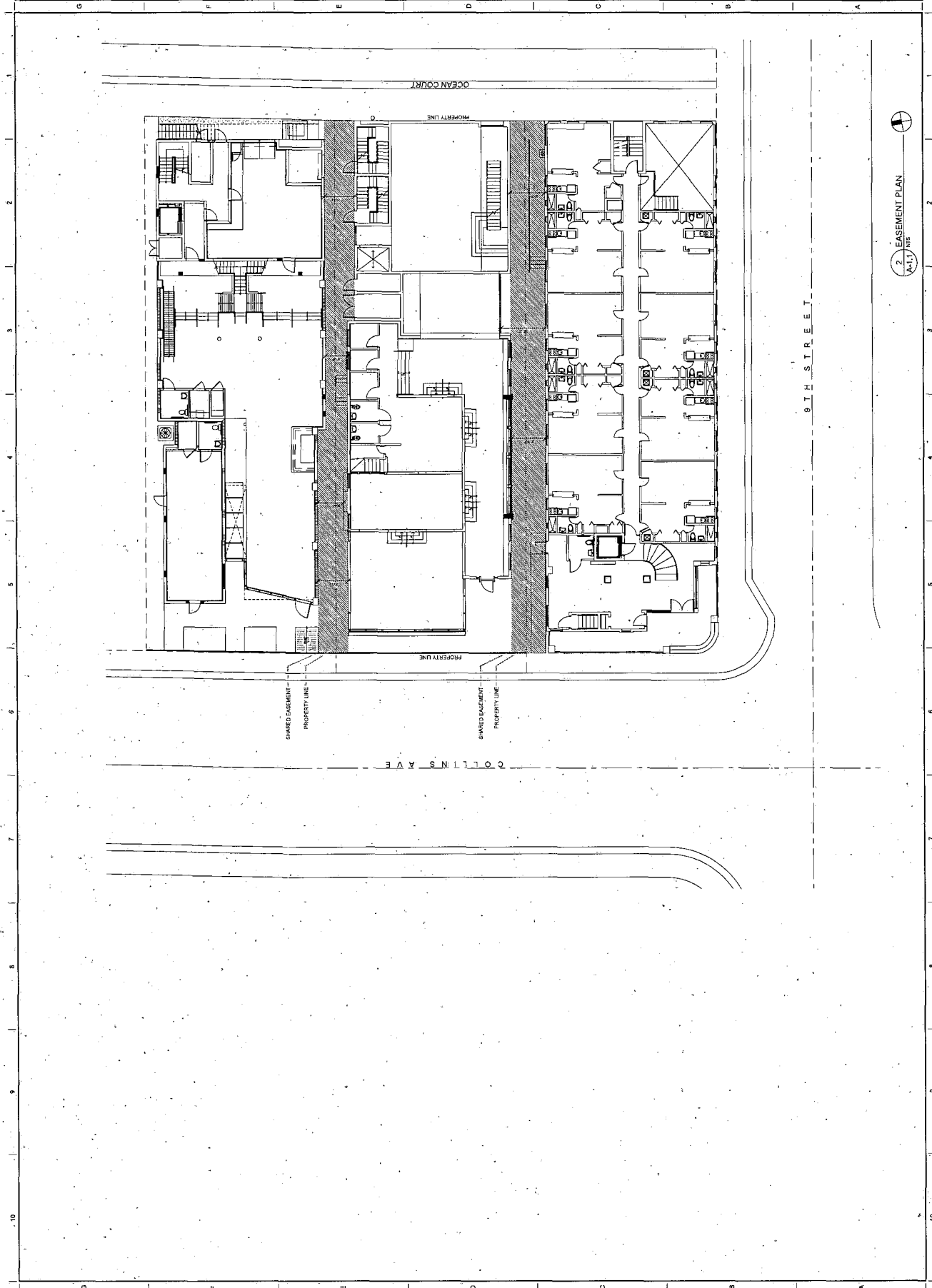
A-1.1

DATE: SEPTEMBER 30, 2011
 PHASE: PHB
 SHEET DESCRIPTION: PROPERTY UNIFICATION
 UNIFICATION EASEMENT PLAN
 SCALE: AS SHOWN
 DRAWN BY: KSI
 SHEET NUMBER: A-1.1

OWNER: [REDACTED]
 PROJECT: [REDACTED]
 ADDRESS: [REDACTED]
 CITY: [REDACTED]
 STATE: [REDACTED]
 ZIP: [REDACTED]
 PHONE: [REDACTED]
 FAX: [REDACTED]
 EMAIL: [REDACTED]
 PROJECT NO.: [REDACTED]
 SHEET NO.: [REDACTED]
 DATE: [REDACTED]
 DRAWN BY: [REDACTED]
 CHECKED BY: [REDACTED]
 APPROVED BY: [REDACTED]

PROPERTY UNIFICATION
 901,909,919 COLLINS AVENUE
 MIAMI BEACH, FL 33139

WILLIAM LANE ARCHITECT, INC.
 350 LINCOLN ROAD, SUITE 501
 MIAMI BEACH, FLORIDA 33139
 L.C. # A4000888
 T. 305.531.5292
 F. 305.531.5494

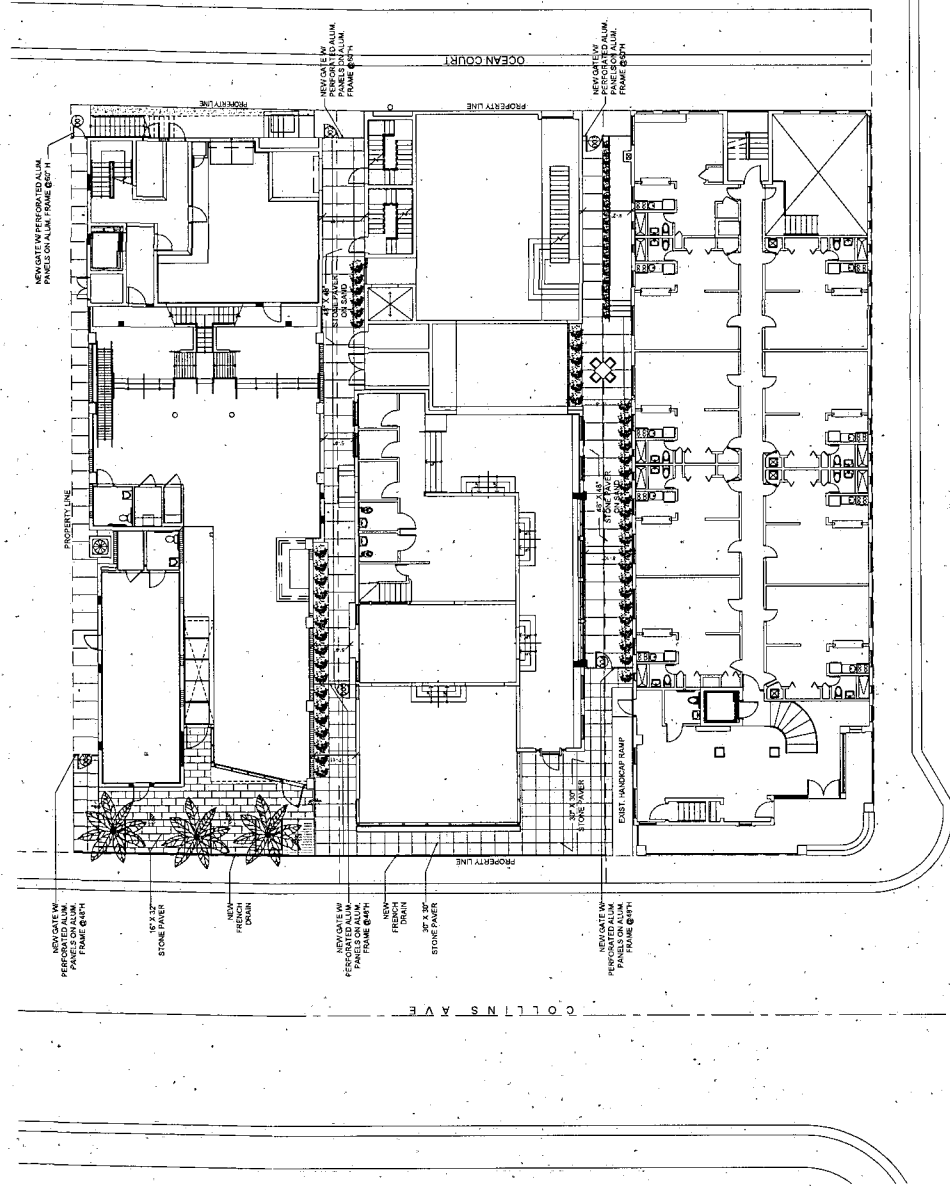


2 EASEMENT PLAN
 A-1.1

PROPERTY UNIFICATION
 901, 909 & 919 COLLINS AVENUE
 MIAMI BEACH, FL 33139

WILLIAM LANE ARCHITECT, INC.
 350 LINCOLN ROAD, SUITE 501
 MIAMI BEACH, FLORIDA 33139
 T. 305.531.5292
 F. 305.531.5494

NO.	DESCRIPTION	GATES (MM)	FENCE SIZE (WxH)
001	NEW GATE W/ PERFORATED ALUM. PANELS ON ALUM. FRAME	20' x 8'0"	20' x 8'0"
002	NEW GATE W/ PERFORATED ALUM. PANELS ON ALUM. FRAME	20' x 8'0"	20' x 8'0"
003	NEW GATE W/ PERFORATED ALUM. PANELS ON ALUM. FRAME	20' x 8'0"	20' x 8'0"
004	NEW GATE W/ PERFORATED ALUM. PANELS ON ALUM. FRAME	20' x 8'0"	20' x 8'0"
005	NEW GATE W/ PERFORATED ALUM. PANELS ON ALUM. FRAME	20' x 8'0"	20' x 8'0"
006	NEW GATE W/ PERFORATED ALUM. PANELS ON ALUM. FRAME	20' x 8'0"	20' x 8'0"



9TH STREET

COLLINS AVE

DATE: SEPTEMBER 18, 2011
 DRAWN BY: NFB
 SHEET DESCRIPTION:
 PROPERTY UNIFICATION
 CONTEXTUAL ELEVATIONS
 SCALE:
 DRAWING: 1/4" = 1'-0"

OWNER:
 PROJECT NAME:
 PROJECT ADDRESS:
 PROJECT CITY/STATE/ZIP:
 PROJECT PHONE:
 PROJECT FAX:
 PROJECT EMAIL:
 PROJECT WEBSITE:
 PROJECT DESCRIPTION:
 PROJECT STATUS:
 PROJECT PHASE:
 PROJECT BUDGET:
 PROJECT SCHEDULE:
 PROJECT RISK:
 PROJECT COMPLIANCE:
 PROJECT PERMITS:
 PROJECT INSURANCE:
 PROJECT FINANCING:
 PROJECT LEGAL:
 PROJECT TAX:
 PROJECT ACCOUNTING:
 PROJECT MARKETING:
 PROJECT SALES:
 PROJECT OPERATIONS:
 PROJECT MAINTENANCE:
 PROJECT REPAIRS:
 PROJECT REPLACEMENTS:
 PROJECT RENOVATIONS:
 PROJECT REPAIRS:
 PROJECT REPLACEMENTS:
 PROJECT RENOVATIONS:

PROPERTY UNIFICATION
 901,909,919 COLLINS AVENUE
 MIAMI BEACH, FL 33139

WILLIAM LANE ARCHITECT, INC.
 350 LINCOLN ROAD, SUITE 501
 MIAMI BEACH, FL 33139
 T. 305.531.5292
 F. 305.531.5494
 L.L.C. # AA0000666

DATE: SEPTEMBER 18, 2011
 DRAWN BY: NFB
 SHEET DESCRIPTION:
 PROPERTY UNIFICATION
 CONTEXTUAL ELEVATIONS
 SCALE:
 DRAWING: 1/4" = 1'-0"

